IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11/10/2002

CORAM

THE HONOURABLE MR. JUSTICE K.P.SIVASUBRAMANIAM

WRIT PETITION No.3388 OF 2001

and W.M.P.Nos.4677, 4678, 7108 of 2001

M.Rajasekaran ..... Petitioner.

-Vs-

1. The Chairman,
Board of Governors,
Indian Institute of Technology,
Madras - 36.

2. The Director,
Indian Institute of Technology,
Madras - 36.

3. The Registrar,
Indian Institute of Technology,
Madras - 36. ..... Respondents.

Petition filed under Article 226 of the Constitution of India
praying for the issue of writ of a writ of certiorarified mandamus as stated
therein.

For petitioner : Mr.K.Chandru, Senior Counsel,
for Mr.A.Raghul

For respondents : Mr.Vijay Narayan

:ORDER

The petitioner seeks for the issue of a writ of certiorarified
mandamus to call for the records pertaining to Resolution No.170/2001 of the
first respondent and the consequential Office Order dated 19.2.20 01, to quash
the same and to direct the respondent to reinstate the petitioner with full

backwages.

2. According to the petitioner, he was working as a Field Officer from 24.10.1984 to 12.7.1993 in the Spices Board, Ministry of Commerce, Government of India. Later he joined as Assistant Registrar, Indira Gandhi National Open University, New Delhi and was working till 17.4.1995. Thereafter he joined the service of the respondent/I.I.T. According to the petitioner he has rendered service without any blemish. He would further state that the permanent staff of the Institute have been classified into three categories namely, (a) academic, (b) technical, and (c) administrative staff. The post of Assistant Registrar falls under the category to which the appointing authority is the Board of Directors. It is further stated that in terms of Section 13 of the statute dealing with the terms and conditions of service, the powers to impose various penalties are specified. Section 13(9) deals with the procedure to impose penalties.

3. The petitioner states that having rendered more than 16 years of service in the Central Government, he has not committed any misconduct throughout his service. The petitioner was in the habit of even pointing out irregularities of the superiors and he was very strict in adherence of Rules and Procedure and in the discharge his official duties. Ever since Professor Natarajan took charge as Director of the Institute, there has been number of complaints of irregularities which were not redressed. The Institute was also in the habit of framing flimsy and frivolous complaints which were referred to retired Judges by spending huge amounts of public funds. The petitioner has mentioned certain incidents which according to him would show that Professor R.Natarajan was adopting vindictive attitude towards nonacademic staff. The petitioner further states that he had brought to the knowledge of the second respondent about the misuse of the Government vehicles, irregularities in financial management, appointment of NMRs. In particular, he had objected to the irregular payments made in favour of Professor Ravindran towards Leave encashment which was against the Rules. He had also made complaints against his superior Mr. Panchalan, Deputy Registrar about irregular appointments. Therefore, according to the petitioner, the respondents/authorities have been nursing a grouse against the petitioner and waiting to take a revenge. While so, on 16.6.2000, one Miss. Geetha claiming to be an NMR worker in I.I.T.Hospital made a telephone call to the petitioner and expressed that she wanted to meet the petitioner in person. In the afternoon she met the petitioner in the office and attempted to give a bribe of Rs.500/- requesting that the petitioner should help her in getting appointment for two candidates of her choice. On hearing this he shouted at her and told her that he would report about the same to the higher authorities. The incident occurred in front of two staff members and the petitioner also claims to have reported the same to the Director vide his letter dated 19.6.2000. On the same day, the third respondent issued a letter to the petitioner informing him that he had abused the said Geetha with filthy and unparliamentary words and the petitioner was asked to submit his explanation on or before 26.6.2 000. A copy of the complaint was also enclosed. On 21.6.2000, the petitioner submitted his explanation stating that he has already reported the incident. The allegation that he abused in filthy language and used unparliamentary words, was denied. The third respondent by

letter dated 5.9.2000 informed the petitioner that the competent authority had ordered an enquiry to be conducted into the charges and that Dr.M.Mariappan, formerly Deputy Director of C.L.R.I.was appointed as Enquiry Officer. The petitioner was directed to appear before the Enquiry Officer on 12.9.2000 at 2.30 p.m. The petitioner also made a complaint to the National Commission for Scheduled Castes and Scheduled Tribes. It appears that on receipt of letters from the Commission, further proceedings against the petitioner were dropped. It is further stated that the petitioner by letter dated 11.9.2000, had sought for clarification and had stated that the enquiry was not at all warranted as definite charges had not been framed. He also objected to the appointment of Mr.K.Panchalan, Deputy Director, against whom he had made several complaints. But the petitioner was informed that the letter calling for explanation dated 19.6.2000 itself was a charge memo and therefore, he should be present for the enquiry. By letter dated 12.9.2000 the petitioner was intimated that the enquiry had been postponed, without mentioning any date. Thereafter there was no communication. Subsequently, by letter dated 11.1.2001 which was served on the petitioner on 12.1.2001 at 5.40 p.m. the petitioner was informed about the enquiry contemplated against him and that since his explanation dated 21.6.2000 was not found to be satisfactory, an enquiry was to be held and the Enquiry Officer had scheduled to hold the enquiry on 15.1.2001. But the third respondent did not specify the time as done in the earlier letter dated 5.9.2000. In the letter dated 11.1.2001 the petitioner was merely asked to appear before the enquiry on 15.1.2001. On 15.1.2001 the petitioner wrote to the respondent stating that their letter did not contain any time for the enquiry. There was no reply for the same. He also sought for clarification by his letters dated 15.1.2001, 16.1.2001, 18.1.2001 and 19.1.2001. On 19.1.2001 he went to the office at 8.00 p.m. He was called upon to meet the Registrar, the third respondent and when he met him the impugned order dated 19.1.2001 was served on him dismissing him from the third respondent

Institution with immediate effect. Resolution No.117 of the Board and the findings of the Enquiry Officer were also enclosed alongwith the impugned order.

4. In the counter affidavit filed by the Registrar of I.I.T., it is contended that by virtue of Statute 13(10), if a member of the staff was aggrieved by any order imposing any penalty and if the order is passed by the Board he has a right to prefer an appeal to the Visitor within a period of three months. The Visitor is none else than the President of India and therefore, the petitioner has equal and efficacious alternative remedy. Further Section 30 of the Institute of Technology Act, 1961 (hereinafter called "the Act") provides for Tribunal of Arbitration in respect of any dispute arising out of the contract between the Institute and any of its employees. Therefore, the petitioner ought not to have filed writ petition without exhausting alternative remedy.

5. It is further contended that on 16.6.2000 the said Geetha who was working as N.M.R. gave a report to the Registrar through the Medical Officer in charge, stating that she had been called by the petitioner to his Chambers at about 2.30 p.m. on 16.6.2000 and he had abused her in filthy and

unparliamentary language. It appears that on that day the petitioner had phoned up the hospital and the call was attended by Mr.Ragunathan, an Assistant working in the hospital, who had asked Smt. Jeyaseeli, to instruct Geetha to meet the petitioner in his Chambers. It is further stated that in the course of conversation, the petitioner had made certain sexual advances and suggestions including asking her to state whether she would be willing to come wherever and whenever he asked him and that he would provide money to her and her friends. The said Geetha had reported the matter to the sister in charge who in turn reported the matter to the Chief Medical Officer. Thereafter she met the Registrar and lodged a complaint. It is further stated that the petitioner appears to have sent two emissaries on the following day to complainant to withdraw the complaint. However, Geetha refused to withdraw the complaint. Therefore, on 19.2.2000 he also made a complaint to the effect that Geetha met him on 16.6.2000 and that she attempted to bribe him and was ready to pay Rs.500/- for appointing two persons as N.M.R. On 19.6.2000 the Institute sent a letter to the petitioner referring to the complaint of Geetha which was also enclosed. The petitioner submitted his explanation on 21.6.2000 stating that he had nothing more to add than what was already stated in the letter dated 19.6.2000. On 5.9.2001 a letter was addressed to the petitioner expressing the intention of the competent authority to hold an enquiry and that Dr.Mariappan was appointed as Enquiry Officer. On 11.9.2000 the petitioner has stated that he has not received the charges. He also objected to the appointment of Panchalan as Presenting Officer since he had filed many complaints against him. On 12.9.2000, the enquiry which was posted was adjourned and the petitioner was informed that further date of enquiry would be intimated. On 11.1.2001, the petitioner was informed that a liberal view has been taken on the objection by the petitioner and it has been decided to appoint Mr.K.Viswanath, Assistant Executive Engineer as the Presenting Officer. The petitioner was also informed that the Enquiry Officer was scheduled to hold the enquiry on 15.1.2001 at the Conference Room at 10.00 a.m. Though the time of the Enquiry had not been originally typed in the letter, the Registrar had added the time in his hand and the receipt of the letter was also acknowledged by the petitioner on 12.1.2001 at 5.40 p.m. If the petitioner was called upon to produce the original of the letter dated 11.1.2001 , this would be made clear. It is further stated that the office of the petitioner was situate on the same floor where the office of the Registrar was situate at a distance of 40 feet. If he had any further doubt about the actual time of commencement of enquiry he could have found out the same. In fact, 13th and 14th of January, 2001 were Saturday and Sunday and on 15.1.2001 the petitioner came to the office at 9.00 a.m. At 9.15 a.m. the Deputy Registrar spoke to the petitioner and reminded to him at 10.00 a.m. In the venue of the enquiry, the Enquiry Officer, Presenting Officer and Geetha were present. They waited till 11.30 a.m. But as the petitioner failed to turn up, the enquiry was conducted ex parte and was closed on the same day.

6. Thereafter also the petitioner addressed letters on 15,16,18 and 19th questioning the status of NMR workers in the Institute. The Enquiry Officer submitted his report holding that the charges of sexual harassment was proved against the petitioner.

7. The entire proceedings were placed before the Board of Governors as Item No.10 in the 137th meeting on 18.2.2001. The Board uniformly decided that in view of the grave offences committed by the petitioner he should be dismissed from service with immediate effect. The Board also invoked its power under statute 13(9) holding that it was not reasonably practical to give the petitioner an opportunity to show cause as he did not present himself before the Enquiry Officer. By order dated 19.2.2001 he was dismissed from service.

8. It is further stated that from the facts stated thus, the petitioner was guilty of a very serious misconduct and that the Supreme Court had in a number of cases taken the view that sexual misconduct at the work place has to be viewed in strictest possible terms and stringent action should be taken to curtail misconduct. In the petition, the petitioner has tried to project his case that as he belongs to Scheduled Caste community, he was being victimised. The complainant Geetha also belongs to Scheduled Caste community and the Presenting Officer, Enquiry Officer, as well as the Registrar, all belonged to Scheduled Caste community. The other allegations of the petitioner to the effect that he was very strict in adhering to Rules and procedures and allegations against Professor R.Natarajan, Director of the Institute, have been denied. It was incorrect to state that he was transferred to various Departments. He was only given various assignments in the same building. The attempt on the part of the petitioner to allege mala fides against the Board of Governors consisting of eminent persons cannot be sustained. The petitioner on his own did not participate in the enquiry and cannot complain violation of principles of natural justice. In the context of the allegation of failure to mention the time of the enquiry, it is stated that the petitioner should be directed to produce the original letter received by him.

9. Mr.K.Chandru, learned Senior Counsel for the petitioner contends that the principles/guidelines issued by the Supreme Court in VISAKA's case (1997 (6) S.C.C.,241) have not been followed in the present case. As per the guidelines, wherever no specific Rules have been formulated in the Rules and Regulations relating to the Service of any Department, Governmental Institutions, and no specific misconduct of sexual harassment had been formulated, the guidelines issued by the Supreme Court has to be complied with. In the present case, admittedly, the Service Regulations do not envisage sexual harassment as one of the misconduct and therefore, the respondent ought to have complied with the guidelines enumerated in the said judgment.

10. On the merits, he would contend that the original charge was entirely different and the finding which was rendered subsequent to the enquiry was different. The letter dated 19.6.2000, which was issued to the petitioner calling for his explanation, merely stated that the petitioner had used filthy and unparliamentary words. But the ultimate finding is to the effect that the petitioner's conduct should be termed as sexual harassment. The entire proceedings have been conducted without even framing a formal charge. It is further contended that the explanation of the petitioner was not taken into account before deciding to conduct enquiry. Learned Senior

Counsel further contended that in the notice dated 11.1.2001, calling upon the petitioner to appear for the enquiry on 15.1.2001, the time of the enquiry had not been mentioned. This was a serious defect which had resulted in the petitioner being gravely prejudiced. This was also brought to the notice of the respondent by the petitioner's letter dated 15.1.2001. But the Enquiry Officer had concluded the proceedings in spite of the said letter and subsequently the Board also did not take care to rectify the said defect. It is further contended on behalf of the petitioner that though by letter dated 5.9.2000, the respondents had contemplated completion of the enquiry within 30 days, nothing was done till the issue of notice on 11.1.2001, whereunder the enquiry was contemplated on 15.01.2001. The petitioner was under the impression that the enquiry had been given up after considering his representation. But all of a sudden, the enquiry was announced and the entire exercise of the dismissal of the petitioner was completed by 19.2.2001 without following any of the accepted norms/procedure relating to fair hearing. Even thereafter, without even communicating the copy of the report of the Enquiry Officer, and without calling upon the petitioner to submit his reply on the Enquiry Officer's report, the respondents have proceeded further to dismiss the petitioner from service. This was opposed to basic principles of natural justice. In the said background, the contention that the petitioner should have filed an appeal cannot be entertained.

11. Mr.Vijay Narayan, learned counsel appearing for the respondent contends that the Statutes of the Institute provide for an appeal to the Visitor which is an effective alternative remedy and the petitioner not having availed of the same, cannot be allowed to pursue this writ petition. It is further stated that the petitioner had sent a representation to the National Commission for S.C./S.T. On 20.4.2001 and on the said representation, the Visitor had also called for remarks on 4.5.2001. Remarks have been furnished by the respondent and the same was pending consideration by the Visitor. It is further pointed out that under Statute No.30, if the petitioner requests the appropriate authority for reference of the dispute, the dispute will be referred to a Tribunal of Arbitration comprising of one Member to be appointed by the Institute, one by the employee and the Umpire by the Visitor. Therefore, there was another alternative effective remedy open to the petitioner.

12. On the need to comply with the directions/guidelines formulated by the Supreme Court in VISAKA's case, Mr.Vijay Narayan contends that the said judgment does not eliminate a properly conducted departmental enquiry. As regards the allegation that time of the enquiry had not been intimated to the petitioner, learned counsel contends that the said submission was false to the knowledge of the petitioner. It is true that in the letter though in the typed portion the timing was not mentioned, and by way of insertion, the time has been mentioned as "at 10.00 A.M.". The petitioner should be directed to produce the original of the letter as he had produced only xerox copy of the same. Even otherwise, the petitioner had more than three days time and was very much working in the very same office and in the very same wing of the building, where the Registrar's Office was situate. He certainly knew about the venue and the time. Even if he was not aware of it, the natural conduct would have been to ascertain the time from the Registrar.

If he had not done so, it would only disclose that the petitioner was not inclined to attend the enquiry. Learned counsel also relied on some of the decisions of the Supreme Court in the context of the allegation of non-compliance of principles of natural justice which will be dealt with below.

13. Learned counsel further contends that the misconduct complained against the petitioner is a very serious and grave one and it was only in those circumstances, the Board has decided that it was not necessary to afford any fresh opportunity to show cause against the punishment considering that the petitioner himself had chosen to remain absent for the enquiry. Severe action had to be taken in order to maintain the morale in the educational institution and in the Service of the Institute. The evidence clearly disclosed that the petitioner had indulged in sexual harassment and was found not fit to continue in the employment of the Primary Educational Institute in the country. The evidence clearly disclosed that the petitioner was guilty of sexual harassment which had to be viewed seriously even in the context of the judgment in Visaka's case.

14. I have considered the submissions of both sides. On the question as to whether the guidelines issued in the context of Visaka's case should be complied with, I am unable to appreciate as to how the said judgment would be of any help to the petitioner who himself is accused of sexual harassment. The guidelines which were issued by the Supreme Court were only in the background that women/victims did not get a fair deal in the complaints given by them, and that sexual harassment in working place should be categorised as a specific serious misconduct. A perusal of the judgment will show that the Supreme Court had expressed their concern over the manner in which such complaints were being dealt with in various Government Departments, undertakings and private establishments, in a very casual manner and that the women/victims did not have a proper opportunity or the atmosphere for proving their allegations. Therefore, the Supreme Court thought fit of framing guidelines emphasising a fair hearing to the said victims. In the present case, the petitioner being a person accused of misconduct of sexual harassment, cannot be aggrieved by the noncompliance of the guidelines as he cannot plead any prejudice flowing out of such non-compliance. The guidelines formulated by the Supreme Court cannot be relied upon in a mechanical manner, only to suit the convenience of the petitioner, by ignoring the rationale or the purpose for which the said guidelines were formulated. Therefore, I am unable to interfere with the impugned order only on the ground of noncompliance of the guidelines in Visaka's case.

15. As regards the contention that the enquiry by an outsider was improper, I am unable to uphold the said objection. If Rules permit, then there is no reason why the said methodology should not be adopted. In fact, that would eliminate apprehensions of allegations of bias, motives and vindictiveness. If the person so appointed is a competent person against whom there is no complaint or apprehension of bias, then there is no reason to condemn such a practice. I am also unable to accept the contention raised on behalf of the petitioner that before the authority decided to hold the

enquiry, the explanation of the petitioner was not taken into account. A reading of the notice dated 5.9.2000 appointing the Enquiry Officer clearly indicates that the explanation of the petitioner dated 21.6.2000 was found to be unsatisfactory. The second notice dated 11.1.2001 intimating commencement of the enquiry also refers to the explanation of the petitioner dated 21.6.2000 and it is stated that the explanation was found to be unsatisfactory.

16. The further contention of the petitioner that the time of the enquiry had not been indicated in the letter dated 11.1.2001 is also not convincing. It is true that the time which has been given as 10.00 A.M. has been inserted in ink. But the positive contention of the respondents is that the original of the letter also bears the correction and the petitioner should be asked to produce the original. Not only no reply affidavit has been filed by the petitioner; but also no convincing reason is given for non-production of the original. I am also inclined to accept the contention of the respondents that even if there had been an omission to mentio n the time, the natural conduct of the petitioner, if he was a responsible employee, would have been to immediately ask the Registrar to inform the time when the enquiry was to be held. The petitioner was very much available at the Institute and he had also waited for three days and thought it fit to send a reply on 15th, namely, the date of enquiry, in which he had stated that the time when the enquiry was to be held had not been notified. Assuming that there was an omission, an officer at the level of the petitioner cannot take advantage of the omission, and wait for the last day only to raise objection about the alleged nonmentioning of the time of the enquiry.

17. Though I have held on all the aforementioned issues against the petitioner, yet there are certain glaring features which reflect a partisan and mechanical approach by the respondents with a determination to find the petitioner guilty and to punish him accompanied by violations of principles of natural justice. It is true that the nature of the charges whether it is of using vulgar and abusive language against a woman or of indulging in sexual harassment, are very serious and grave and if the delinquent is found guilty should be punished severely. But there is no exception to comply with the basic principles of natural justice and to eliminate arbitrary or motivated exercise of power. Even a person accused of murder, or grave offences against the State is entitled to fair hearing and

treatment. I am able to notice the following defects which demonstrate not only noncompliance of basic Rules of natural justice, but also an unfair approach.

I. ABSENCE OF FORMAL CHARGE:

18. A formal charge memo was never formulated. The letter dated 19 .6.2000 merely states that the petitioner had used filthy and unparliamentary words. There is no charge of sexual harassment as found by the Enquiry Officer. The following is the letter dated 19.6.2000:

"It has been reported that you called one Smt.K.P.Geetha working as a NMR

Helper in the Institute Hospital to your chamber at around 2.30 p.m. on 16.06.2000 and accused her with filthy and unparliamentary words. A copy of the report is enclosed.

I am by direction by the competent authority of the Institute to call your explanation for the same. Your explanation should reach the undersigned on or before 23.06.2000."
For reasons known to the administration, this mistake is ignored and repeated in spite of the petitioner pointing out that he has not received a properly formulated charge memo. It has to be borne in mind that the charge of sexual harassment is not one of the enumerated categories of misconduct in the Conduct Rules. Therefore, in fairness, at least after the defect was pointed out, the respondent should have taken steps to issue a proper charge memo containing the specific charge namely "sexual harassment". But the respondents in spite of the defect having been pointed out, chose to take the stand in their letter dated 11.9.2000 that the letter calling for explanation itself was the charge memo and that the petitioner had contravened Rule 3(b) of the Schedule B of the Statute. The illegality in the stand taken by the respondents would be further clear from the following extract of Rule 3(b):

"An employee should, at all times, be courteous in his dealing with other members of the staff, students and members of the public."

Therefore, on the very stand taken by the respondents, the delinquent was charge-sheeted only for discourteous behaviour and not for sexual harassment. Discourteous and abusive behaviour, using unparliamentary, filthy or abusive words are possible against members of same sex also and will not by themselves constitute sexual harassment which is a more serious misconduct which if not specifically mentioned, the delinquent would be definitely prejudiced. Even while responding to the petitioner's objection that a formal charge has not been formulated, the respondents did not choose to use the expression "sexual harassment" in their letter dated 11.9.2001. In fact, the acts complained against the petitioner is not one of the enumerated conduct in paragraph No.2 of the guidelines issued by the Supreme Court in VISHAKA' s case, which is no doubt an inclusive definition. It is an elementary principle of Service Law that charges should be clear, specific and unambiguous to enable the delinquent to put forth his defence. The reason why the Supreme Court had formulated guidelines in VISHAKA's case is only due to the fact that the Conduct Rules as now prevailing in public services do not contain a specific provision for the misconduct of sexual harassment. But nonetheless even though sexual harassment is not an enumerated misconduct, yet, the employer will be at liberty to charge-sheet delinquents for the misconduct, on the basis of law declared by the Supreme Court. But the minimum which is expected is the formulation of a specific charge which is very essential. In the present case, on the very stand taken by the respondents, the charge against the petitioner is only as enumerated under Rule 3(b) and not sexual harassment as found by the Enquiry Officer. In the above circumstances, the prejudice which has been caused to the petitioner is self evident and glaring and hence the finding of the Enquiry Officer cannot be sustained. It is rather surprising as to how the Enquiry Officer could have found the petitioner guilty of sexual harassment when the charge is stated to be under Rule 3(b).

The defect in the charge-sheet and absence of formulated charge alone is sufficient to hold that the entire proceedings are vitiated.

II. Non-furnishing of Enquiry Report:

19. Admittedly, the report of the Enquiry Officer was not furnished to the employee at any stage prior to the passing of the order of termination. That the copy of the Enquiry report should be furnished to the delinquent, more so in the case of a Enquiry Officer and the Disciplinary Officer being different is no more res integra. In MANAGING DIRECTOR, ECIL v. B.KARUNAKAR (1993 (4) S.C.C., 727) and in PUNJAB NATIONAL BANK & ORS v. K.B.MISRA & ANR. (1998 (II) L.L.J., 809), the Supreme Court held that both the dictates of reasonable opportunity as well as principles of natural justice require that before the Disciplinary Authority comes to its own conclusion, the delinquent should have opportunity to reply to the finding of the Enquiry Officer and thereafter the Disciplinary Authority should consider the evidence, the report of the Enquiry Officer and the representation of the employee.

20. The attempt on the part of Mr.Vijay Narayan, to rely on some of the judgments of the Supreme Court in support of his contention that non-furnishing of the Enquiry report will not be fatal if no prejudice had been caused, cannot be countenanced having regard to the facts of the present case. The facts disclose that no copy of the report was ever supplied to the delinquent and the same was furnished only along with the copy of the dismissal order. The prejudice is ex facie proved and established. In the present case, no proper charge memo had been framed. The fact that he was found guilty of sexual harassment was not known to him till he received the order of termination. He has also not attended the enquiry and therefore, it is all the more necessary that he should know about the evidence against him and the finding of the Enquiry Officer so as to make his effective representation before the Disciplinary Authority. The enquiry report does not deal with the objections of the petitioner and the absence of a formulated charge which objection had been raised by the petitioner. The petitioner would have brought it to the notice of the Disciplinary Authority, as Mr.Chandru, learned Senior Counsel, pointed out. He was not charged for sexual harassment. This is one instance of the prejudice caused to the petitioner.

21. It is true that in the following cases, the Supreme Court and a Division Bench of this Court found that if the delinquent had not shown any prejudice due to non-supply of the report, it was held that non-supply alone was not fatal to the order of termination.

(i) S.K.SINGH v. CENTRAL BANK OF INDIA & OTHERS (1996 (6) S.C.C., 41 5).
(ii) ROHINI ANANTHA NARAYANAN v. GENERAL MANAGER, B.H.E.L RANIPET (1 997 Writ L.R., 565)
(iii) UNION BANK OF INDIA v. VISHWA MOHAN (1998 (4) S.C.C., 310).
(iv) STATE OF U.P. v. HARENDRA ARORA (2001 (6) S.C.C., 392).

22. The above decisions were rendered in the background of

the factual matrix of the respective cases, namely, the delinquent not being able to show any prejudice having been caused to him. Facts of each case have to be analysed without which the law laid down by the Constitution Bench in E.C.I.L. case, cited above, would become ineffective and inoperative. As stated earlier in the present case, prejudice has also been caused to the petitioner which is glaring more so considering that no show-cause notice was also issued by the Disciplinary Authority which is mandatory. This is not a case where the delinquent is given a notice by the Disciplinary Authority without a copy of the Enquiry Report. The Disciplinary Authority had nothing to do with the enquiry; nor was any notice was issued to the delinquent at least to hear him. It would be a farcical procedure and gross violation of principles of natural justice for the Disciplinary Authority who had not seen or heard the evidence against the delinquent; nor would give a chance to the delinquent to appear before him to hear him on the enquiry report; to pass an order of termination.

III. ABSENCE OF SECOND SHOW-CAUSE NOTICE:

23. Admittedly, no show-cause notice in terms of the Rules had been given to the delinquent to represent on the findings of the Enquiry Officer. Here again, the law laid down by the Supreme Court is clear namely, if Rules provide for complying with the said requirement, it shall be complied with. The relevant portion of Statute 13(9) after listing the categories of punishments is as follows:-

"No order imposing on any member of the staff any of the penalties specified at (iv) to (vii) above shall be passed by any authority subordinate to that by which he was appointed and except after an enquiry has been held and the member of the staff concerned has been given reasonable opportunity of showing cause of the action proposed to be taken in regard to him.

No order imposing on any member of the staff any of the penalties specified at (i) to (ii) above shall be passed by any authority subordinate to that by which he was appointed and unless the member of the staff concerned has been given an opportunity to make a representation to the Appointing Authority.

Notwithstanding the above provisions, it shall not be necessary to follow the procedure mentioned above in the following cases, namely:-

(a) where an employee is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge;

(b) where the authority empowered to dismiss or remove the person or to reduce him in rank is satisfied that, for some reason to be recorded by that authority in writing, it is not reasonably practicable to give that person an opportunity of showing cause; or

(c) where the Visitor is satisfied that, in the interests of the security of the State, it is not expedient to give that person such an opportunity.

If any question arises whether it is reasonably practicable to give any person an opportunity of showing cause under clause (b) above, the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank, as the case may be, shall be final."

24. Mr.Vijay Narayan relies on the non-obstante clause which entitles the authority not to comply with the requirement of giving reasonable

opportunity namely Clause (b) as extracted above, which submission I am inclined to hold as unsustainable. The said extraordinary power has to be used only in rarest of rare cases as the nature of the three enumerated categories themselves would disclose. The said power incorporated in the Rules is nothing more than a repetition of second proviso to Article 311(2) of the Constitution of India. While clause (a) relates to an automatic dismissal as a result of conviction by Criminal Court, Clause (c) relates to the Visitor being satisfied by the security of the State. Clause (b) is contemplated in a case where the further enquiry is rendered impossible and impracticable. For instance, the delinquent may be absconding and is not available or he has become sick or become insane. There is no contention of any atmosphere of violence or gross indiscipline as in the case of SATYAVIR SINGH v. UNION OF INDIA (1985 (4) S.C.C., 252) or as pointed out in the case of UNION OF INDIA v TULSIRAM PATEL (1985 (3) S.C.C., 398). None of the circumstances pointed out in those judgments is available in the present case. While no reason was communicated to the petitioner which may not by itself invalidate the order, even the reason disclosed in the Resolution of the Board is insufficient, which is as follows:-

"To consider the misconduct of a Group A Officer.
The Board noted the complaint preferred by Smt. K.P.Geetha, (an SC lady), who was an NMR Helper in the Institute Hospital and the Report of the Enquiry Officer. The Board also noted the findings of the Enquiry Officer that the behaviour of Shri M.Rajasekaran, Assistant Registrar, Administration III Section, towards Smt. Geetha, at his Chamber on 16.6.2000 amounts to sexual harassment at workplace.
The Board deliberated the matter in detail and felt that it is not reasonably practicable to give Shri Rajasekaran an opportunity for showing cause, as he did not present himself before the Enquiry Officer and did not participate in the enquiry process.
In view of the grave offence committed by Shri M.Rajasekaran, Assistant Registrar, Administration III Section, the Board RESOLVED to dismiss him from the services of the Institute with immediate effect."

The only reason given is that the petitioner did not appear for the enquiry. This is not at all a sufficient or proper reason for invoking the said extraordinary power and discretion. The fact that he did not attend the enquiry is all the more the reason why he should be informed about the evidence and findings of the enquiry. The fact that the delinquent did not attend the enquiry does not amount either to estoppel or admission of guilt. If the same logic is to be applied, then he will not have even the right to file an appeal before the appellate authority. His right to challenge the Enquiry Officer's findings does not get wiped out only because he did not attend the enquiry. As the Constitution Bench had pointed out in ECIL's case, where the Enquiry Officer is other than the Disciplinary Authority, the disciplinary proceedings break into two stages. At both stages, various issues arise for consideration and the delinquent's right to represent is not lost because at the first stage he remained absent. As pointed out the Supreme Court in TULSIRAM PATEL'S case (1985 (3) S.C.C., 398) Rules framed under Article 309 cannot result in exclusion of principles of natural justice and if otherwise the provision will have to be declared as ultra vires and

that the provision will have to be strictly construed. The Supreme Court also observed that the Disciplinary Authority was not expected to dispense with the enquiry lightly or arbitrarily or out of the ulterior motives merely in order to avoid holding of enquiry.

25. The attempt on the part of the respondents to rely on the said extraordinary power cannot be sustained. The provision has to be invoked under rare and extraordinary circumstances and cannot at all be appreciated in the present case. Even as regards non-furnishing of Enquiry Report, the I.I.T./respondent is fully aware of the legal position vide, the judgment of D.Murugesan,J. dated 30.4.2001 in W.P.No.769 of 2000 rendered against the respondent. In that case, at least a second show-cause notice had been issued, but without a copy of the Enquiry Report. In the present case, not being satisfied in failing to comply with the said requirement, the respondent is also prepared to take extreme stand of resorting to the second proviso to Article 311(2) of the Constitution of India.

IV. UNFAIR APPROACH BY THE RESPONDENTS:

26. Any punitive action which is taken should be just, fair and reasonable and not mechanical. The mere classification of the charge as sexual harassment, cannot enable the authorities to adopt arbitrary, mechanical or unfair approach. The aforesaid facts disclose that the respondents appear to have adopted an unfair approach and have shown unnecessary urgency. The failure to formulate a definite and clear charge even after the defect was pointed out is rather unfortunate. It is pertinent to note that after the petitioner's reply dated 11 .9.2000, the enquiry posted on 12.9.2000 was adjourned without mentioning any date. Thereafter nothing happened till 11.1.2001 when the intimation was sent fixing the enquiry on 15.1.2001. If there was no urgency and could wait for four months, why did it not occur to the respondents to formulate a proper charge memo, furnish a copy of the enquiry report, and giving second show-cause notice which all put together would not have taken more than two or three weeks? Where was the need for invoking the extraordinary power of dispensing with the show-cause notice as contemplated under Statute 13(9) as against a person who was very much available at the Institute. Justice must not only be done, but also appear to be done. It has to be borne in mind that the petitioner appears to have been complaining and taking up certain issues relating to the administration in general and the appointment of NMRs in particular and alleged irregularities thereon. In fact, even after the proposed enquiry on 12.9.2000 was adjourned without any date, the petitioner had written a letter to the Registrar on 2 2.12.2000, complaining about the alleged irregular appointment of one Balamurugan without the consent of the Committee and the approval of the authorities. There may or may not be any truth or basis for his complaints. But when the respondents indulge in certain glaring procedural irregularities in dealing with him, it would only give rise to a genuine apprehension that there is a motive and lend credence to his allegation of mala fides. Mr.Chandru pointed out certain factual details relating to the charge against the petitioner which according to him would

establish that the charge was a false and trumped-up charge. I do not propose to go into those issues considering the course of action which is to follow as

indicated below.

27. For all the aforesaid reasons, I am also unable to accept the objection of alternative remedy. The defects pointed out above, go to the root of the procedure adopted by the respondents and gross violation of principles of natural justice. It is well-settled that alternative remedy being a ground for rejection of a petition under Article 226 of the Constitution of India is only a Rule of discretion and not a bar of jurisdiction.

28. The result is that the petitioner is entitled to succeed. However, I am also inclined to take note of the gravity of the misconduct alleged against the petitioner and it may not be proper to allow the petitioner to join duty without being cleared of charges. I have not gone into the merits of the charge and the evidence against the petitioner. There has to be a proper framing of specific and clear charge and enquiry into the charges and till then it is but proper that he should not be allowed to join duty. Though allowing this writ petition will have the effect of reinstating him in service, he shall be kept under suspension by passing simultaneous orders of reinstatement and suspension. The respondents may thereafter initiate the process of a proper enquiry including formulating of definite and clear charge followed by proper enquiry. It is also desirable and proper that a different Enquiry Officer is appointed to hold the enquiry. The entire process shall be completed within a period of three months from the date of receipt of a copy of this order. The petitioner is also directed to extend proper co-operation without seeking any adjournment. The question of entitlement for backwages, from the date of dismissal would abide by the outcome of the proceedings. Till then, the petitioner will be entitled to only the subsistence allowance as provided under Rules.

29. The writ petition is allowed subject to the above observations. No costs. Connected miscellaneous petitions are closed as unnecessary.

Index:Yes. 11.10.2002
Internet:Yes.
sai/-

To
1. The Chairman,
Board of Governors,
Indian Institute of Technology,
Madras – 36.

2. The Director,
Indian Institute of Technology,
Madras -36.

3. The Registrar,
Indian Institute of Technology,

Madras – 36.